

Title 15 - Mississippi Department of Health

Part III – Office of Health Protection

Subpart 01 – Health Facilities Licensure and Certification

CHAPTER 53 DRUG AND ALCOHOL TESTING REGULATIONS

100 AUTHORITY AND PURPOSE.

100.01 The following rules and regulations for drug and alcohol testing of employees and job applicants by public and private employers are duly adopted and promulgated by the Mississippi State Department of Health pursuant to the authority expressly conferred by the laws of the State of Mississippi at Sections 71-7-1, et. al., of the Mississippi Code of 1972, Ann., hereinafter referred to as "the Act."

100.02 The purpose of these rules and regulations is to promulgate standards and guidelines concerning:

1. Standards for drug and alcohol testing, laboratory certification, suspension and revocation of certification;
2. Body specimens that are appropriate for drug and alcohol testing;
3. Retention and storage procedures to ensure reliable results on confirmation tests and retests;
4. Initial drug and alcohol tests and confirmation tests; and
5. Standard language to be included in employer's drug and alcohol testing notices concerning:
 - a. A statement advising the employee of the existence of state statutes on employer drug and alcohol testing;
 - b. A general statement concerning confidentiality; and
 - c. Procedures for how employees can confidentially report the use of prescription or nonprescription medications prior to being tested.

101 SCOPE.

101.01 In the State of Mississippi, every public and private employer who voluntarily implements a drug and alcohol testing policy and program, pursuant to the Act, shall do so in accordance with these regulations. Any person or entity who collects specimens for drug and alcohol testing, who conducts initial and/or

confirmation tests, or who conducts retests on specimens after a positive confirmation test, pursuant to the Act, shall do so in accordance with these regulations.

102 DEFINITIONS.

102.01 **Alcohol.** Ethyl alcohol.

102.02 **The Act.** Sections 71-7-1, et.al., of the Mississippi Code of 1972, Ann.

102.03 **Board.** The Mississippi Board of Health.

102.04 **Confirmation Test.** A drug and alcohol test on a specimen to substantiate the results of a prior drug and alcohol test on the specimen. The confirmation test must use an alternate method of equal or greater specificity than that used in the previous drug and alcohol test.

102.05 **Department.** The Mississippi State Department of Health.

102.06 **Drug.** An illegal drug, or a prescription or nonprescription medication.

102.07 **Drug and Alcohol Test.** A chemical test administered for the purpose of determining the presence or absence of a drug or alcohol or their metabolites in a person's bodily fluids.

102.08 **Employee.** Any person who supplies a service for remuneration or pursuant to any contract for hire to a private or public employer in this state.

102.09 **Employer.** Any individual, organization or government body, subdivision or agency thereof, including partnership, association, trustee, estate, corporation, joint stock company, insurance company or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air or express company doing business in or operating within this state, or which has offered or may offer employment to one or more individuals in this state.

102.10 **Illegal Drugs.** Any substance, other than alcohol, having psychological and/or physiological effects on a human being and that is not a prescription or nonprescription medication, including controlled dangerous substances and controlled substance analogs or volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate introduction into the body.

102.11 **Initial Test.** An initial drug or alcohol test to determine the presence or absence of drugs or alcohol or their metabolites in specimens.

102.12 **Laboratory.** Any laboratory that is currently certified or accredited by the federal Clinical Laboratory Improvement Act, as amended, by the federal

Substance Abuse and Mental Health Services Administration, by the College of American Pathologists, or that has been deemed by the State Board of Health to have been certified or accredited by an appropriate federal agency, organization or another state.

102.13 **MRO**. Medical Review Officer.

102.14 **Medical Review Officer**. A licensed physician responsible for receiving laboratory results generated by an employer's drug and/or alcohol testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

102.15 **Nonprescription Medication**. A drug that is authorized pursuant to federal or state laws for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.

102.16 **Prescription Medication**. A drug prescribed for use by a duly licensed physician, dentist or other medical practitioner licensed to issue prescriptions.

102.17 **SAMHSA**. Substance Abuse and Mental Health Services Administration.

102.18 **Specimen**. A tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.

103 **THE DRUGS.**

103.01 An employer may include in its drug and alcohol testing protocols marijuana, cocaine, opiates, amphetamines, phencyclidine, alcohol and other controlled substances. However, if testing for controlled substances other than those specifically named above is conducted, testing for such substances can be done only if an appropriate federal agency has established an approved protocol and positive threshold for each such substance.

103.02 Specimens collected under Department regulations may only be used to test for controlled substances designated for testing as described in this section and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by Department regulations.

103.03 This section does not prohibit procedures reasonably incident to analysis of specimens for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration or presence of adulterants).

104 **BODY SPECIMENS APPROPRIATE FOR DRUG AND ALCOHOL TESTING.**

104.01 **Drugs** - Urine for initial and confirmation tests.

104.02 **Alcohol** - Breath and/or saliva for initial tests; Blood for confirmation tests.

105 **COLLECTION OF SPECIMENS; INITIAL TESTING AND ANALYSIS PROCEDURES.**

105.01 Employers who implement a drug and alcohol testing program pursuant to the Act shall contract with manufacturers, vendors, or other providers of drug and alcohol testing devices, or with a laboratory, for the purpose of initial drug and alcohol testing of employees to:

1. Train employees of the employer implementing the drug and alcohol testing program in the collecting of specimens and the administering of initial tests; or
2. Provide the employer with personnel to collect specimens and administer the initial tests.

105.02 A specimen for a drug and alcohol test may be taken by any of the following persons:

1. A physician, a registered nurse or a licensed practical nurse;
2. A qualified person employed by a laboratory;
3. An employee or an independent contractor of the employer conducting a drug and alcohol testing program pursuant to the Act who has been trained in the collecting of specimens by a manufacturer, vendor, or other provider of drug and alcohol testing devices, or by a laboratory; or
4. Any person deemed qualified by the State Board of Health.

105.03 Any initial drug or alcohol test yielding a positive result shall be followed by an appropriate confirmation test.

106 **CONFIRMATION TEST - LABORATORY ANALYSIS PROCEDURES - REPORTING RESULTS.**

106.01 Employers who implement a drug and alcohol testing program pursuant to the Act shall contract with a laboratory to conduct confirmation tests on specimens which produce a positive result in testing for drugs or alcohol in the initial.

106.02 Laboratories, as certified or accredited as defined herein, which conduct confirmation drug and alcohol tests are required to have the following:

1. Methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial tests and confirmation tests.

2. Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens being tested,
 3. Retention and storage procedures to ensure reliable results on confirmation tests and retests, and
 4. Guidelines on how to establish cut-off detection levels for drugs or their metabolites for the purposes of determining a positive test result.
- 106.03 Results of the confirmation test shall be reported by the laboratory to the employer's Medical Review Officer in accordance with the provisions set forth herein.
- 106.04 All employers shall have a Medical Review Officer who shall be responsible for receiving and interpreting laboratory results of drug and alcohol tests. Said MRO shall be the sole person authorized to review the results of such tests.
- 106.05 The laboratory shall report confirmation test results to the employer's Medical Review Officer within an average of five (5) working days after receipt of the specimen by the laboratory. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the laboratory specimen identification number (accession number).
- 106.06 The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmation test. Only specimens confirmed positive shall be reported positive for a specific drug or alcohol.
- 106.07 The laboratory shall send only to the Medical Review Officer the drug or alcohol testing results which, in the case of a report positive for drug or alcohol use, shall be signed by the individual responsible for day-to-day management of the laboratory or the individual responsible for attesting to the validity of the test reports.
- 106.08 Unless otherwise instructed by the employer in writing, all records pertaining to a given urine or blood specimen shall be retained by the drug testing laboratory for a minimum of 2 years.
- 106.09 Laboratories will preserve positive specimens in such a manner as to ensure that said specimens will be available for any necessary retests in accordance with the Act.
- 107 **LABORATORY CERTIFICATION, SUSPENSION AND REVOCATION OF CERTIFICATION.**
- 107.01 A laboratory, as defined herein, is such a facility that is currently certified or accredited by the federal Clinical Laboratory Improvement Act, as amended, by the federal Substance Abuse and Mental Health Services Administration, by the

College of American Pathologists, or that has been deemed by the State Board of Health to have been certified or accredited by an appropriate federal agency, organization or another state. Suspension and/or revocation of its standing as a laboratory by its certifying or accrediting body shall be deemed as suspension and/or revocation of its standing as a laboratory for the purposes of drug and alcohol testing.

108 **STANDARD LANGUAGE.**

- 108.01 Any employer in the State of Mississippi who utilizes an employee and/or job applicant drug and alcohol testing program, pursuant to the Act, shall in its written policy statement and notice to employees include as a part of such written policy statement and notice the following wording:

You are hereby advised that **(Insert name of employer here)** has implemented a drug and alcohol policy and conducts a testing program, pursuant to Sections 71-7-1, et.al., of the Mississippi Code of 1972, Ann. (hereinafter referred to as "the Act"), and you are hereby advised of the existence of said Act.

All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by **(Insert name of employer here)** through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the Act and these regulations. Any information obtained by **(Insert name of employer here)** pursuant to the Act and these regulations shall be the property of the employer. **(Insert name of employer here)** shall not release to any person other than the employee or job applicant, or employer medical, supervisory or other personnel, as designated by **(Insert name of employer here)** on a need to know basis, information related to drug and alcohol test results unless: (a) The employee or job applicant has expressly, in writing, granted permission for **(Insert name of employer here)** to release such information; it is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee; or there is a risk to public health or safety that can be minimized or prevented by the release of such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information. The confidentiality provisions provided for by the Act shall not apply to other parts of an employee's or job applicant's personnel or medical files. If an employee refuses to sign a written consent form for release of information to persons as permitted in the Act, **(Insert name**

of employer here) shall not be barred from discharging or disciplining the employee.

An employee or job applicant to be tested shall be given (1) a medication disclosure form to permit the employee or job applicant to disclose any non-prescription or prescription medications that have been taken within forty-five (45) days prior to being tested, and (2) a statement that the form shall be submitted directly to the employer's designated Medical Review Officer, ensuring that no person or entity has access to the information disclosed on the form other than the Medical Review Officer.

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All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by **(Insert name of employer here)** through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the Act and these regulations. Any information obtained by **(Insert name of employer here)** pursuant to the Act and these regulations shall be the property of the employer. **(Insert name of employer here)** shall not release to any person other than the employee or job applicant, or employer medical, supervisory or other personnel, as designated by **(Insert name of employer here)** on a need to know basis, information related to drug and alcohol test results unless: (a) The employee or job applicant has expressly, in writing, granted permission for **(Insert name of employer here)** to release such information; it is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required

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under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee; or there is a risk to public health or safety that can be minimized or prevented by the release of such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information. The confidentiality provisions provided for by the Act shall not apply to other parts of an employee's or job applicant's personnel or medical files. If an employee refuses to sign a written consent form for release of information to persons as permitted in the Act, **(Insert name of employer here)** shall not be barred from discharging or disciplining the employee.

An employee or job applicant to be tested shall be given (1) a medication disclosure form to permit the employee or job applicant to disclose any non-prescription or prescription medications that have been taken within forty-five (45) days prior to being tested, and (2) a statement that the form shall be submitted directly to the employer's designated Medical Review Officer, ensuring that no person or entity has access to the information disclosed on the form other than the Medical Review Officer.